

§ 5.53 Recoverable costs.

(a) Expenses compensable under this regulation include but are not limited to reasonable attorneys' fees; expert witness fees; the expenses of clerical services, travel, subsistence, studies, demonstrations and other reasonable costs of participation actually incurred.

(b) Compensation of an applicant is limited to the actual and reasonable costs of its participation. Compensation paid to the staff of any participating group or organization is limited to the rate of reimbursement normally paid by the participant for staff services and may not exceed the rates paid to DOT employees for providing comparable services. Compensation of a participant's contractor may be valued at the prevailing market rates for the kind and quality of service provided, but may not exceed the rates paid to DOT employees for providing comparable services.

(c) Reimbursement for travel, subsistence, and miscellaneous expenses must conform to the types and rates prescribed by the DOT "Travel Manual," (DOT Order 1500.6).

(d) Except as otherwise noted in this paragraph, compensation is not provided for work performed or costs incurred prior to approval of an application by the Evaluation Board. Compensation is not provided for negotiating claims, answering NHTSA inquiries, or preparing an application, other than a participant's first approved application.

§ 5.55 Supplementary compensation.

(a) Applicants may apply to the Evaluation Board for supplementary compensation if the initial award is insufficient to permit the applicant to complete its proposal and if:

(1) The Board requested the applicant to perform work in addition to that contained in the approved proposal, or

(2) The applicant demonstrates it has been subject to an unforeseeable and material change in its circumstances, or

(3) The applicant or the Board substantially underestimated the probable cost of participation.

(b) Compensation is not provided for work performed or costs incurred by an applicant or its contractors in advance of the Board's decision to provide supplementary compensation.

(c) The Board provides supplementary compensation under the criteria of § 5.51 and paragraphs (a) and (b) of this section.

§ 5.57 Payments to applicants.

An applicant shall submit a claim for compensation to NHTSA's Office of Consumer Participation within 90 days of the applicant's completion of

participation in the proceeding. Such claims shall include bills, receipts, or other proofs of costs incurred. Within 60 days of receipt of a completed claim, NHTSA's Office of Consumer Participation, after consultation with NHTSA's Office of Financial Management, directs the Office of Financial Management to make payment for compensable expenses. For good cause shown, payment to an applicant may be expedited, and requests for partial payment may be submitted for compensation of part performance. Payment of claims is delayed, or relevant portions withheld, if it is determined that a claim or any portion of a claim will be audited within 90 days of the submission of the claim.

§ 5.58 Audits.

For the purpose of conducting an audit, the Secretary, the Administrator, or other appropriate Federal official shall have access to any relevant records of a participant awarded compensation under this part. Applicants shall retain all records, books of account, bills, receipts, and any other relevant records supporting a claim for compensation for a period of three years after receipt of such compensation.

§ 5.59 Guidelines.

The Secretary establishes guidelines to explain further the criteria to be used by the Evaluation Board in assessing financial data under § 5.51(b)(2) and for determining reasonable allowable costs under § 5.53. The Secretary may establish additional guidelines governing applicants' accounting and recordkeeping procedures.

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[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. 342]

PART 1008—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

AGENCY: Interstate Commerce Commission.

ACTION: Modification of Final Rules; Proceeding held open for further comment on one aspect of proposed rules.

SUMMARY: Regulations adopted in 358 I.C.C. 114 are clarified on appeal. The regulation, as modified, will improve carrier practices by providing uniform procedures for the efficient processing, investigation and timely disposition of overcharge, duplicate payment and overcollection claims by motor common carriers and freight forwarders. Rule 1008.9(a) providing for disposition of unidentified payments is stayed, pending additional proceedings.

DATES: 1. Regulations published September 14, 1978, 43 FR 41040, as modified, shall be effective February 22, 1979.

2. Further comments on Rule 1008.9(a) due March 9, 1979; reply comments due April 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak (202) 275-7693 or Harvey Gobetz (202) 275-7656.

SUPPLEMENTARY INFORMATION: In our prior decision, 358 I.C.C. 114, served September 1, 1978, the Commission adopted regulations providing uniform procedures for the expeditious processing and disposition by motor carriers and freight forwarders of claims for overcharge duplicate payment, and overcollection. By subsequent decision served October 11, 1978, the effective date of those regulations was stayed pending completion of administrative review.

It is evident from the limited number of appeals¹ that the rules have been favorably received by most shippers and carriers. However, there is merit in two requests for minor modification. Accordingly, the regulations as published at 43 F.R. 41040 are amended as follows.

§ 1008.4 [Amended]

Section 1008.4(e) is modified to read as follows:

(e) A carrier shall accept copies instead of the original documents required to be submitted in this section where the carrier is furnished with an agreement entered into by the claimant which indemnifies the carrier for subsequent duplicate claims which might be filed and supported by the original documents.

§ 1008.9 [Amended]

To avoid ambiguity, § 1008.9(b) is modified to read as follows:

¹ 5 petitions for administrative review and 3 replies were filed.

(b) When a carrier which participate in a transportation movement, but did not collect the transportation charges, finds that an overpayment has been made, that carrier shall immediately notify the collecting carrier. When the collecting carrier (whether single or joint line haul) discovers or is notified by such a participating carrier that an overcharge, duplicate payment, or overcollection exists for any transportation charge which has not been the subject of a claim, the carrier shall create a file as if a claim had been submitted and shall record in the file the date it discovered or was notified of the overpayment. The carrier that collected the charges shall then refund the amount of the overpayment to the person who paid the transportation charges or to the person that made duplicate payment within 30 days from the date of such discovery or notification.

Several petitioners object to the procedures provided for handling unidentified payments, and characterize the requirement of a single notification and request for information as inadequate and lacking in specificity. They argue that §1008.9(a) would create a windfall for the carriers and place the burden on the shipper to establish that the carrier is not entitled to keep an unidentified payment. They suggest that §1008.9(a) goes beyond establishing standardized procedures, and into the area where the Commission found jurisdiction lacking "to settle or adjudicate these claims." 358 I.C.C. 114 at page 117. While they support all uniform procedures designed to elicit information which is necessary to resolve unidentified payments, they object to what they perceive as an ultimate disposition on the merits in favor of the carrier. If the Commission permits the retention of such funds and their use in overall carrier operations, National Industrial Traffic League (NITL) suggests that, at a minimum, the total dollar amount of those funds should be treated as non-investor supplied capital, or deducted from any property investment base.

The rule places the initial burden upon the carrier for notification and verification of an unidentified payment. When such notification does not elicit the requested information, the carrier may conditionally retain the unidentified payment as payment of freight charges owing to it, subject to refund under normal claims procedures. Shippers are afforded ample protection by the provision for application of regular claims procedures following the 90-day period.

Although we are satisfied as to our jurisdiction in this area, we feel that a limited reopening of the record on the

subject of unidentified payments is desirable. This subject was not addressed in the proposed rules nor was it originally contemplated at the time this proceeding was instituted. We believe that a more comprehensive analysis is necessary to ascertain the scope and significance of this complex and controversial area. Additionally, we feel that the proposal advanced by NITL is entitled to further consideration by the parties.

Parties and other interested persons are requested to file with the Commission information concerning the nature, handling, and disposition of unidentified payments. Participant's comments should address the following:

- (1) Their frequency and volume.
- (2) Their origin and nature.
- (3) Types of shippers, carriers, and clearinghouses experiencing them.
- (4) Existing carrier practices.
- (5) The party who should bear the burden of identification.
- (6) Suggested procedures for disposition, including the NITL recommendation.
- (7) Refinement of the definition of unidentified payments.
- (8) Other relevant data.

Dated: December 20, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2314 Filed 1-22-79; 8:45 am]

[7035-01-M]

[Ex Parte No. MC-43 (Sub-No. 7)]

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The regulations promote full disclosure between the carrier and owner-operator in the leasing contract, promote the stability and economic welfare of the independent trucker segment of the motor carrier industry, and eliminate or reduce the opportunity for skimming and other illegal practices. The existing lease and interchange regulations have been rewritten so as to be simpler and easier to understand.

EFFECTIVE DATE: February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Bruce Kasson (202) 275-7723.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking published in the FEDERAL REGISTER on November 23, 1977, 42 FR 59984, this proceeding was instituted to revise and rewrite the Commission's leasing regulations in Title 49 of the Code of Federal Regulations, Chapter X, Part 1057—Lease and Interchange of Vehicles (49 CFR Part 1057). Because the initial notice did not include formal rules, but rather discussed the proposals generally, a second notice consisting of proposed rules was published in the FEDERAL REGISTER on July 11, 1978, 43 FR 29812.

The final rules provide that the cost of various operating expenses such as fuel, permits, tolls, and licenses must be allocated in the lease. The lease must also identify all items that may be charged-back to the lessor, clearly state the insurance costs and responsibilities of each party, and specify the terms of any equipment purchase plan or rental contract that gives the carrier the right to make deductions from the lessor's compensation. These provisions promote a "truth in leasing concept" and will ensure that the carrier and owner-operator fully disclose the obligations and responsibilities of each party.

Because the rules require that (1) the compensation due the owner-operator be stated on the face of the lease, or in an addendum, and (2) the owner-operator be provided a copy of the freight bill, owner-operators will be able to have an accurate and complete accounting of the monies earned under leasing arrangements. Payment of compensation to lessors within 15 days of submission of paperwork, as required by the rules, assures carriers that necessary paperwork will be submitted, and, at the same time, assures owner-operators that compensation will be timely if the paperwork is submitted.

Provisions have also been added relating to the handling and return of any escrow funds held by the carrier. Interest must be paid on escrow funds, the funds must be returned within 45 days, and the owner-operator must receive a full accounting of escrow fund transactions and deductions.

The rules set forth in Appendix A are adopted under authority of 49 U.S.C. 304 (e) and (f), and 5 U.S.C. 552, 553, and 559.

Dated: January 9, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Stafford would not require the carrier to pay interest on the escrow account

(§ 1057.12(e)(5)), and he would delete § 1057.12(j).

H. G. HOMME, Jr.,
Secretary.

APPENDIX A

Part 1057 is revised and reorganized to read as follows:

Part 1057—Lease and Interchange of Vehicles

Subpart A—General Applicability and Definitions.

- Sec.
1057.1 Applicability.
1057.2 Definitions.

Subpart B—Leasing Regulations

- 1057.11 General leasing requirements.
1057.12 Written lease requirements.

Subpart C—Exemptions for the Leasing Regulations

- 1057.21 General exemptions.
1057.22 Exemption for trip leasing between authorized carriers.
1057.23 Exemption for trip leasing specialized equipment.
1057.24 Exemption for trip leasing equipment used in agricultural operations.
1057.25 Recordkeeping for agricultural exemption.
1057.26 Exemption from requirement of exclusive possession and control.

Subpart D—Interchange Regulations

- 1057.31 Interchange of equipment.

Subpart E—Private Carriers and Shippers

- 1057.41 Rental of equipment to private carriers and shippers.

AUTHORITY: 49 U.S.C. 304(e) and (f) and 5 U.S.C. 552, 553, and 559.

Subpart A—General Applicability and Definitions

§ 1057.1 Applicability.

The regulations in this part apply to the following actions by motor carriers holding permanent or temporary operating authority from the Commission to transport property:

- The leasing of equipment with which to perform transportation regulated by the Commission.
- The leasing of equipment to motor private carrier or shippers.
- The interchange of equipment between motor common carriers in the performance of transportation regulated by the Commission.

§ 1057.2 Definitions.

(a) *Authorized carrier*.—A person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of 49 U.S.C. 10921, 10922, 10923, 10928, 10931, or 10932.

(b) *Equipment*.—A motor vehicle, straight truck, tractor, semitrailer, full

trailer, any combination of these and any other type of equipment used by authorized carriers in the transportation of property for hire.

(c) *Interchange*.—The receipt of equipment by one motor common carrier of property from another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement.

(d) *Owner*.—A person (1) to whom title to equipment has been issued, or (2) who, without title, has the right to exclusive use of equipment for a period longer than 30 days, or (3) who has lawful possession of equipment, registered and licensed in any State in the name of that person.

(e) *Lease*.—A contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation.

(f) *Permanent lease*.—A lease in which the authorized carrier acquires the use of equipment, with or without driver, from an owner for a period of 30 days or more.

(g) *Trip lease*.—A lease in which an authorized carrier acquires the use of equipment, with or without driver, from an owner for a period of time less than 30 days.

(h) *Lessor*.—In a lease, the party granting the use of equipment, with or without driver, to another.

(i) *Lessee*.—In a lease, the party acquiring the use of equipment with or without driver, from another.

(j) *Sublease*.—A written contract in which the lessee grants the use of leased equipment, with or without driver, to another.

(k) *Addendum*.—A supplement to an existing lease which is not effective until signed by the lessor and lessee.

(l) *Private carrier*.—A person, other than a motor carrier, transporting property by motor vehicle in interstate or foreign commerce when (1) the person is the owner, lessee, or bailee of the property being transported; and (2) the property is being transported for sale, lease, rent, or bailment, or to further a commercial enterprise.

(m) *Shipper*.—A person who sends or receives property which is transported in interstate or foreign commerce.

(n) *Escrow fund*.—Money deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and State permit costs, and for any other purposes mutually agreed upon by the lessor and lessee.

(o) *Detention*.—The holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the

shipment, under circumstances not attributable to the performance of the carrier.

Subpart B—Leasing Regulations

§ 1057.11 General leasing requirements.

Other than through the interchange of equipment as set forth in § 1057.31, and under the exemptions set forth in subpart C of these regulations, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions:

(a) *Lease*.—There shall be a written lease granting the use of the equipment and meeting the requirements contained in § 1057.12.

(b) *Receipts for equipment*.—Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows:

(1) When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt.

(2) When possession of the equipment by the authorized carrier ends, it shall obtain a receipt from the owner.

(3) Authorized representatives of the carrier and the owner may take possession of leased equipment and give and receive the receipts required under this subsection.

(c) *Identification of equipment*.—The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service as follows:

(1) During the period of the lease, the carrier shall identify the equipment in accordance with the Commission's requirements in Part 1058 of this chapter (Identification of Vehicles). Upon termination of the lease, the authorized carrier shall remove all identification showing it as the operating carrier before giving up possession of the equipment.

(2) Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative.

(d) *Records of equipment*.—The authorized carrier using equipment leased under this section shall keep records of the equipment as follows:

(1) If the equipment is being leased for periods of less than 30 days, the authorized carrier shall prepare and keep documents covering each trip for

which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Trip leases which contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers.

(2) If the equipment is being leased for periods of 30 days or more, the authorized carrier shall comply with the provisions of paragraphs (d)(1) of this section, but it may keep the required information at its terminals or principal office as part of its records rather than with the leased equipment.

§ 1057.12 Written lease requirements.

Except as provided in the exemptions set forth in Subpart C of these regulations, the written lease required under § 1057.11(a) shall contain the following provisions:

(a) *Parties.*—The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.

(b) *Duration to be specific.*—The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by § 1057.11(b).

(c) *Minimum duration of 30 days when operated by owner.*—The period for which the lease applies shall be for 30 days or more when the equipment is to be operated for the authorized carrier by the owner or an employee of the owner.

(d) *Exclusive possession and responsibilities.*—The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

(e) *Compensation to be specified.*—The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized rep-

resentative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(f) *Items specified in lease.*—The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items.

(g) *Payment period.*—The lease shall specify that payment to the lessor under permanent or trip lease to the authorized carrier shall be made within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The lease shall clearly specify the delivery documents and other paperwork that must be submitted before the lessor can receive payment.

(h) *Copies of freight bill.*—Subject to the right of the authorized carrier to delete the names of shippers and consignees shown on the freight bill, the lease shall specify that the authorized carrier shall give a copy of the rated freight bill before or at the time of settlement to those lessors whose revenue is based on a percentage of the gross revenue for a shipment. The lease shall clearly specify the right of the lessor, regardless of method of compensation, to examine copies of the carrier's tariff.

(i) *Charge-back items.*—The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at time of payment or settlement.

(j) *Products, equipment, or services from authorized carrier.*—The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract which gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments.

(k) *Insurance.*—(1) The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to Commission regulations under 49 U.S.C. 10927. The

lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged-back to the lessor.

(2) If the lessor purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor. Also, where the lessor purchases such insurance in this manner, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy. Each certificate of insurance shall include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

(3) The lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made.

(l) *Escrow funds.*—If escrow funds are required, the lease shall specify:

(1) The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party.

(2) The specific items to which the escrow fund can be applied.

(3) That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways:

(i) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or

(ii) By providing a separate accounting to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis.

(4) The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time.

(5) That while the escrow fund is under the control of the carrier, the

carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on 91-day, 13-week Treasury bills as established in the weekly auction by the Department of Treasury.

(6) The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor or all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than 45 days from the date of termination.

(m) *Copies of the lease.*—An original and two copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease unless a statement as provided for in § 1057.11(c)(2) is carried on the equipment instead. The owner of the equipment shall keep the other copy of the lease.

Subpart C—Exemptions for the Leasing Regulations

§ 1057.21 General exemptions.

Except for § 1057.11(c) which requires the identification of equipment, the leasing regulations in this part shall not apply to:

(a) Equipment used in substituted motor-for-rail transportation of railroad freight moving between points that are railroad stations and on railroad billing.

(b) Equipment used in transportation performed exclusively within any commercial zone as defined by the Commission.

(c) Equipment leased without drivers from a person who is principally engaged in such a business.

(d) Any type of trailer not drawn by a power unit leased from the same lessor.

§ 1057.22 Exemption for trip leasing between authorized carriers.

Regardless of the leasing regulations set forth in this part, an authorized carrier may lease equipment to or from another authorized carrier under the following conditions:

(a) The identification of equipment requirements in § 1057.11(c) must be complied with.

(b) The lessor must own the equipment or hold it under a lease of 30 days or more.

(c) The lessor must regularly use the equipment in the service it is authorized by the Commission to perform.

(d) The equipment must be leased for transportation in the direction of a point which the lessor is authorized to serve.

(e) There must be a written agreement between the authorized carriers concerning the equipment as follows:

(1) It must be signed by the parties or their authorized representatives.

(2) It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under § 1057.11(b) is given to the lessor until: (i) Possession of the equipment is returned to the lessor and the receipt required under § 1057.11(b) is received by the authorized carrier; or (ii) Possession of the equipment is returned to the lessor or given to another authorized carrier in an interchange of equipment.

(3) A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

§ 1057.23 Exemption for trip leasing specialized equipment.

The requirement in § 1057.12(c) concerning the minimum duration of a lease for equipment with driver, does not apply where:

(a) The equipment is owned by an authorized automobile carrier and is leased or subleased to another authorized automobile carrier for use in transporting motor vehicles.

(b) The equipment is owned by an authorized tank truck carrier and is leased or subleased to another authorized tank truck carrier for use in transporting commodities in bulk.

(c) The equipment is dump equipment leased or subleased for use in transporting salt and calcium chloride, in bulk, for ice and snow control purposes during the period from November 1 through April 30 of each year.

§ 1057.24 Exemption for trip leasing equipment used in agricultural operations.

The requirement in § 1057.12(c) concerning the minimum duration of a lease for equipment with driver, does not apply where the authorized carrier complies with the provisions of § 1057.25 and where:

(a) A farmer or a cooperative association or federation of cooperative associations under 49 U.S.C. 10526(a)(4) or (5).

(b) A private carrier and the equipment is used regularly in the transportation of (1) property referred to in 49 U.S.C. 10526(a)(6), or (2) perishable products manufactured from perishable property referred to in that section.

(c) The equipment has completed a movement covered by 49 U.S.C. 10526(a)(6) and is leased to the authorized carrier for use next in one of the following:

(1) A loaded movement in any direction.

(2) One or more of a series of movements, loaded or empty, in the general direction of the place where the equipment is based.

(3) A movement described in paragraph (1) of this section and then a movement described in paragraph (2) of this section.

§ 1057.25 Recordkeeping for agricultural exemption.

To qualify for the exemption in § 1057.24, prior to leasing the equipment, the authorized carrier shall receive and retain a statement signed by the owner, or authorized representative of the owner, which includes:

(a) Authorization for the driver to lease the equipment for such movements.

(b) Certification that the equipment meets the qualifications in paragraph (a) or (b) of § 1057.24.

(c) Specification of the origin, destination, and the time of beginning and ending of the last movement which brought the equipment within the exemption of § 1057.24.

§ 1057.26 Exemption from requirement of exclusive possession and control.

The requirements in § 1057.12(d) concerning exclusive possession and control of leased equipment by the authorized carrier lessee do not apply where:

(a) The parties provide in the lease that the authorized carrier lessee be considered the owner of the equipment for the purpose of subleasing the equipment to other authorized carriers under the regulations in this part during the length of the lease.

(b) An authorized carrier of household goods has leased equipment for the transportation of household goods, as defined by the Commission, and the equipment is not being operated by or for the authorized carrier lessee at that time.

Subpart D—Interchange Regulations

§ 1057.31 Interchange of equipment.

Authorized common carriers may interchange equipment under the following conditions:

(a) *Interchange agreement.*—There shall be a written contract, lease, or

other arrangement providing for the interchange and specifically describing the equipment to be interchanged. This written agreement shall set forth the specific points of interchange, how the equipment is to be used, and the compensation for such use. The interchange agreement shall be signed by the parties or by their authorized representatives.

(b) *Operating authority.*—The carriers participating in the interchange shall hold certificates of public convenience and necessity which authorize the transportation of the commodities at the point where the physical exchange occurs.

(c) *Through bills of lading.*—The traffic transported in interchange service must move on through bills of lading issued by the originating carrier. The rates charged and the revenues collected must be accounted for in the same manner as if there had been no interchange. Charges for the use of the interchanged equipment shall be kept separate from divisions of the joint rates or the proportions of such rates accruing to the carriers by the application of local or proportional rates.

(d) *Identification of equipment.*—The authorized common carrier receiving the equipment shall identify equipment operated by it in interchange service as follows:

(1) The authorized common carrier shall identify power units in accordance with the Commission's requirements in Part 1058 of this chapter (Identification of Vehicles). Before giving up possession of the equipment, the carrier shall remove all identification showing it as the operating carrier.

(2) Unless a copy of the interchange agreement is carried on the equipment, the authorized common carrier shall carry a statement with each vehicle during interchange service certifying that it is operating the equipment. The statement shall also identify the equipment by company or State registration number and shall show the specific point of interchange, the date and time it assumes responsibility for the equipment, and the use to be made of the equipment. This statement shall be signed by the parties to the interchange agreement or their authorized representatives. The requirements of this paragraph shall not apply where the equipment to be operated in interchange service consists only of trailers or semitrailers.

(e) *Connecting carriers considered as owner.*—An authorized carrier receiving equipment in connection with a through movement shall be considered to the owner of the equipment for the purpose of leasing the equipment to other authorized carriers in furtherance of the movement to desti-

nation or the return of the equipment after the movement is completed.

Subpart E—Private Carriers and Shippers

§ 1057.41 Rental of equipment to private carriers and shippers

Authorized carriers may rent equipment to private carriers and shippers only as follows:

(a) Authorized carriers may rent equipment, with or without drivers, to private carriers or shippers where the vehicles are to be used for transportation which is exempt under 49 U.S.C. 10526 (a)(7) or (b)(1).

(b) Authorized carriers may rent equipment with drivers to private carriers or shippers where their operating authorities specifically allow such service.

(c) Authorized carriers may rent equipment without drivers to private carriers or shippers where the authorized carriers are transporting property wholly for and on the billing of railroads.

(d) Authorized contract carriers may rent equipment without drivers to private carriers and shippers where approval of the rental contracts has been obtained from the Commission.

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[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

PART 672—GROUND FISH OF THE GULF OF ALASKA

Apportionment of Reserve Amounts

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final Regulations.

SUMMARY: These regulations make additional amounts of fish available to foreign fishing in accordance with the provisions of the fishery management plan (FMP) for Groundfish of the Gulf of Alaska and the regulations implementing this FMP (see 50 CFR 672.20(c) (43 FR 56238), and 50 CFR 611.92(b)(1)(ii) (43 FR 59322)). These regulations apply to vessels of foreign nations fishing for groundfish in the Gulf of Alaska.

EFFECTIVE DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Because of uncertainties about specifications of U.S. capacity, particularly the extent to which U.S. catcher vessels delivering fish to foreign processors at sea would harvest groundfish, the FMP established a reserve of fish which could be released during the season to foreign harvesting vessels if U.S. vessels did not harvest at anticipated levels.

On August 23, 1978, the North Pacific Fishery Management Council (the Council) adopted an amendment to the FMP for groundfish which increased the reserve of pollock to 133,800 metric tons and added to reserves appropriate amounts of species taken incidental to fishing for pollock. The purpose of this reserve amount of fish was to assure that an adequate supply of fish was available to U.S. vessels wishing to sell U.S.-caught fish to foreign processing vessels at sea. The amendment was approved by the Assistant Administrator for Fisheries on September 22, 1978 (43 FR 46349).

Final regulations were published on December 1, 1978 (43 FR 56233). The final regulations established the criteria and timing of any reserve release. The final regulations also established a procedure for public comment on the extent to which vessels of the United States would harvest reserve amounts during the remainder of the fishing year.

II. DETERMINATION OF AMOUNT OF RESERVE RELEASE

In accordance with the requirements of 50 CFR 672.20(c) and 50 CFR 611.92(b)(1)(ii), the Regional Director has determined that U.S. vessels will not harvest any of the twenty-five percent reserve for all species except sablefish scheduled to be released on or as soon as possible after January 2, 1979, for the following reasons:

1. The domestic annual harvests (DAHs) specified by the FMP are sufficient to provide for U.S. catches expected to be delivered to U.S. processors.

2. The reserves remaining after this release are sufficient to provide for U.S. catches expected to be delivered to foreign processing vessels (joint venture catches).

During the public comment period, no testimony was received indicating that the capacity and intended activities of the U.S. fishing fleet and U.S.